

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 SY-05

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----- 082423

P R 290830Z JAN 76

FM USMISSION USBERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC 1915

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L USBERLIN 159

E.O. 11652: GDS

TAGS: PGOV, PFOR, WB, GW

SUBJECT: POSSIBLE FEDERAL PROSECUTION OF LORENZ  
KIDNAPPERS

REFS: A) USBELIN 43, B) USBERLIN 133

1. SUMMARY: SENAT LEGAL EXPERTS CONFIRMED FOR ALLIED MISSIONS JANUARY 27 THAT, GIVEN FACTS OF CASE AND GERMAN LAW, FEDERAL PROSECUTOR WILL HAVE NO CHOICE BUT TO FIND THAT HIS OFFICE MUST ASSUME COMPETENCE FOR AT LEAST MAJOR PART OF PROSECUTION AGAINST MEMBERS OF JUNE 2 MOVEMENT. WE WILL ATTEMPT TO ENCOURAGE DEVELOPMENT OF JOINT ALLIED RECOMMENDATIONS OVER NEXT FEW DAYS. WE HAVE LEARNED THAT SENSATIONALIST WEEKLY MAGAZINE "QUICK" WILL CARRY STORY IN EDITION TO HIT NEWSSTAND JANUARY 29 TO EFFECT THAT ALLIES HAVE MADE STRONG DEMARCHE IN BONN PROTESTING INTERVENTION OF FEDERAL PROSECUTOR IN CASE. END SUMMARY.

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2. MISSION LEGAL ADVISORS ASKED EXPERTS FROM SENAT

CHANCELLORY AND SENATOR FOR JUSTICE'S OFFICE FOR SUMMARY OF CHARGES AND LEGAL POSSIBILITIES. SENAT EXPERTS THOUGHT THAT OFFICE OF FEDERAL PROSECUTOR WOULD HAVE VIRTUALLY NO CHOICE UNDER JURISDICTIONAL PROVISIONS OF CRIMINAL CODE AND LAW ON COURT ORGANIZATION BUT TO BRING CHARGES AND HANDLE PROSECUTION. THEY BASED THIS OPINION ON FACT THAT OFFENSES INCLUDE FORMATION OF CRIMINAL BAND AND COERCION OF GOVERNMENTAL ORGANS OF BOTH LAENDER AND FRG, AND THAT LAW ASSIGNS FEDERAL PROSECUTOR RESPONSIBILITY FOR CASES INVOLVING SUCH CRIMES WHEN THEY ARE OF MORE THAN MINOR SIGNIFICANCE. SENAT EXPERTS CONSIDER THAT NO RESPONSIBLE LEGAL OFFICER COULD CONCLUDE THAT JUNE 2 ACTIVITIES WERE OF MINOR NATURE, THEY BELIEVE THAT CASE FOR FEDERAL PROSECUTION OR LORENZ KIDNAPPERS IS MORE COMPELLING THAN WAS THAT OF MAHLER IN 1972. THEY MADE CLEAR THAT WHILE THEY WERE DISCUSSING ONLY LEGAL PROCEDURES SENAT WOULD BE STRONGLY OPPOSED TO ALLIED INTERVENTION TO DEPRIVE FEDERAL PROSECUTOR OF COMPETENCE HE WOULD REOUTINELY EXERCISE UNDER LAW.

3. ONLY OPEN QUESTION SENAT EXPERTS SAW WAS WHETHER ALL ASPECTS OF JUNE 2 MOVEMENT ACTIVITIES DISCUSSED IN REPORT FROM BERLIN PROSECUTOR TO KARLSRUHE (REF A) WOULD BE TAKEN OVER BY FEDERAL PROSECUTOR OR WHETHER SOME PARTS OF LESSER SIGNIFICANCE MIGHT BE LEFT TO LOCAL PROSECUTION. THEY WERE CERTAIN THAT BASIC PROSECUTION FOR LORENZ KIDNAPPING AND INEXTRICABLY LINKED COERCION OF CONSTITUTIONAL ORGANS WOULD FALL TO FEDERAL RESPONSIBILITY. THEY DEEMED IT HIGHLY LIKELY THAT FEDERAL PROSECUTOR WOULD CONCLUDE THAT VON DRENKMANN MURDER, APPARENTLY COMMITTED BY MANY OF SAME PEOPLE, WOULD ALSO BE TAKEN OVER AS INTEGRAL PART OF JUNE 2 MOVEMENT'S ACTIVITIES, AND SOMEWHAT LESS LIKELY THAT INDIVIDUAL CASES OF BANK ROBBERY CITED IN REPORT WOULD BE INCLUDED. KEY QUESTION WOULD BE WHETHER EVIDENCE COULD BE DEVELOPED THAT THESE ACTIVITIES WERE LINKED TO GENERAL ACTIVITIES OF JUNE 2 BAND OR WHETHER SOME AT LEAST APPEARED TO BE INDIVIDUAL AFFAIRS. PROBABILITY IS THAT ALL CRIMES THAT APPEAR

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TO BE PART OF JUNE 2 MOVEMENT ACTIVITIES WOULD BE HANDLED IN SINGLE LARGE TRIAL.

4. COMMENT: WHILE WE LEARNED NOTHING NEW, MEETING WAS USEFUL BECAUSE IT DEMONSTRATED TO FRENCH LEGAL CONSTRAINTS WITHIN WHICH GERMANS SEE THEMSELVES OPERATING. BRITISH NOW APPEAR TO SEE SITUATION BASICALLY AS WE DO. THEY ARE COMING TO CONCLUSION

THAT ALLIES WILL HAVE TO CONFIRM POSITION THEY TOOK IN MAHLER CASE AND THAT MAIN THRUST OF ALLIED-FRG CONSULTATION WOULD THEN BE TO CONSIDER PRESENTATIONAL ASPECTS, SUCH AS PRESS ANNOUNCEMENTS AND GUIDELINES FOR STATEMENTS BY GERMAN OFFICIALS WHEN CHARGES ARE BROUGHT AND DURING COURSE OF TRIAL SO AS TO AVOID GIVING IMPRESSION OF POLITICAL DEMONSTRATION (PARA 18, REF A). WE WILL ATTEMPT TO WORK OUT COMMON RECOMMENDATIONS FOR EMBASSIES OVER NEXT FEW DAYS.

5. DESIRABILITY OF REACHING AGREED ALLIED POSITION RELATIVELY SOON APPEARS TO BE INCREASED BY GROWING PRESS INTEREST IN SUBJECT. REF B NOTED ESSENTIALLY FACTUAL FRANK-FURTER ALLGEMEINE STORY. WE LEARNED FROM SENATOR FOR JUSTICE'S OFFICE JANUARY 28 THAT NEXT DAY'S ISSUE OF YELLOW PRESS WEEKLY "QUICK" WILL CARRY STORY ALLEGING THAT ALLIES HAVE MADE STRONG DEMARCHE IN BONN PROTESTING INTENTION OF FEDERAL PROSECUTOR TO HANDLE CASE. "QUICK" REPORTED CALLED SENATOR'S OFFICE FOR COMMENT AND WAS TOLD ONLY THAT, AS IS ROUTINE, ALLIES AND SENAT WERE DISCUSSING LORENZ PROSECUTION BUT THAT THERE WERE NO PROTESTS HERE, AND SENATOR'S OFFICE KNEW NOTHING ABOUT WHAT MIGHT HAVE BEEN SAID IN BONN. ALLIED PRESS SPOKESMAN (BRITISH) HAS ALREADY TOLD "QUICK" THAT WE WILL MAKE NO COMMENT ON SUCH A STORY, AND WE WOULD EXPECT MISSIONS TO BRUSH OFF ANY FURTHER INQUIRIES SAME WAY, LONGER ISSUE DRAGS ON, HOWEVER, GREATER CHANCE IS THAT THERE WILL BE MORE SUCH UNINFORMED STORIES WHICH COULD HAVE EFFECT OF FURTHER POLITICIZING MATTER AND WHETTING SOVIET INTEREST. GEORGE

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** LITIGATION, BERLIN TRIPARTITE MATTERS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 29 JAN 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** CunninFX  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976USBERL00159  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
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**Office:** ACTION EUR  
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**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
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**Previous Handling Restrictions:** n/a  
**Reference:** 76 USBERLIN 133  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** CunninFX  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 22 APR 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <22 APR 2004 by BoyleJA>; APPROVED <12 AUG 2004 by CunninFX>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** POSSIBLE FEDERAL PROSECUTION OF LORENZ KIDNAPPERS  
**TAGS:** PGOV, PFOR, WB, GE, (LORENZ, PETER)  
**To:** BONN  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006